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OPPORTUNITIES NOW ENTERPRISES (O.N.E.) INC.

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August 9, 1996

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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Dear Mr. Caton:

Re: Comments on Fourth Notice of Proposed Rulemaking
CC Docket No. 92-297

We believe that the proposed systems in the 28 GHz band, especially licensing Local Multipoint Distribution Services ("LMDS") offers the FCC the ability to promote economic opportunity and competition. In reference to LMDS eligibility, we believe that the public interest can best be served if Local Exchange Carriers (LEC)s and cable operators are not eligible to obtain LMDS licenses in the geographic areas they serve. Since your proposed rules contemplate only a single LMDS licensee in each service area, allowing LECs and cable operators to obtain LMDS licenses in the geographic areas they serve will not promote the competitive objectives of the Telecommunications Act of 1996. The potential source of competition in both the local exchange and multichannel video programming markets will not exist if LECs and cable operators secure the LMDS license in the geographic area they serve.

With limits on LECs and cable operators in areas where they currently provide services, the FCC will facilitate the entry of new players in competition with both LECs and cable operators. Small businesses, women and minority owned firms will encounter less barriers to market entry. These entities do not have the access to capital to compete with the overwhelming majority of LECs and cable operators. Most minorities and minority owned firms are in urban areas. This is especially applicable in the case of Latinos in that 90% of Latinos live in urban areas. Urban areas are precisely where LECs and cable operators enjoy significant market share and have the power to exclude competitors. We agree with the Attorneys General of Pennsylvania, Minnesota, Wisconsin, Delaware, Florida, Idaho, Iowa, Massachusetts, Missouri, Oklahoma, Virginia, and West Virginia that incumbent monopolists have an incentive to stifle competition and are all too willing to pay or bid premium prices to assure future monopoly profits.

Sincerely yours,



Mateo R. Camarillo
President

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August 8, 1996

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: Comments on Notice of Proposed Rule Making on Geographic
Partitioning and Spectrum Disaggregation by Commercial Mobil Radio
Services Licensees, WT Docket No. 96-148 & GN Docket No. 96-113

The National Council of La Raza (NCLR), in a recent study on the participation and portrayal of Latinos in telecommunications, Out of the Picture: Hispanics in the Media, found that Americans of Hispanic descent have been "out of the picture" for a number of years. The Federal Communications Commission's (FCC) own records show women, minorities, especially Latinos, are almost completely out of the picture. They own very few FCC licensed properties. Reed Hundt, Chairman of the FCC has expressed concern by this dismal record and testified on May 20, 1994, before the House Minority Enterprise Subcommittee that there remains a fundamental obligation for both Congress and the FCC to examine new and creative ways to ensure minority opportunity.

The U.S. Congress mandated by statute, Section 309(j)(4)(D) of the Communications Act that gave the FCC authority to use auctions in 1993, that the FCC promote economic opportunity and competition, avoid excessive concentration of licenses and insure that access to new and innovative technologies by disseminating licenses among a wide variety of applicants including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

The FCC intends to implement the Congressional mandate under Section 257 of the Communications Act to eliminate entry barriers into the telecommunications market for small businesses and Section 309(j) of the Communications Act. Changes are needed in the Notice of Proposed Rulemaking (NPRM) to meaningfully implement Section 309(j) and Section 257. There are very limited opportunities for Latinos, women and other minorities in the NPRM as it is currently written. By using the legally defensible concept

of **small**, and limiting partitioning and disaggregation to be conducted with small firms only, Congressional mandates can be met without specific race or gender based incentives. We suggest that the \$15 million annual sales standard available in the F Block be used as the standard for defining entities that qualify as entrepreneurs. The Supreme Court decision, *Adarand v. Peña* occurred over a year ago. We further urge the FCC to complete the requisite study and develop initiatives that meet the strict scrutiny standard.

The nation's spectrum is a valuable public asset. There must be some limits on spectrum use and allocations to serve the interest of all the public. The public interest is not served if the most wealthy entities and companies with ready access to capital dominate the business opportunities created by geographic partitioning and spectrum disaggregation. The FCC should **adopt the same rules for all PCS blocks**, including A, B, D, and E, i.e. allow **all** licensees to geographically partition and disaggregate spectrum at any time to **entities that qualify as entrepreneurs** and meet minimum eligibility requirements. In addition, the FCC should encourage the Directors of the Telecommunications Development Fund to give priority consideration for loans to small businesses with annual gross sales under \$15 million.

By treating licensees in all PCS blocks equally in partitioning and disaggregation eligibility, the FCC is complying with the Congressional mandate expressed in Section 309(j)(4)(D) and Section 257 of the Communications Act and dramatically enhancing opportunities for minorities women and other small business persons to participate in PCS and other wireless opportunities. We agree with the U.S. Small Business Administration that the FCC should allow small businesses to acquire a partitioned license. We also favor the SBA's definition of \$11 million or less in annual sales for small. If the FCC prefers the \$15 million size standard used by the in the F block, we believe that the intent of Congress would be met for promoting economic opportunity and competition, avoid excessive concentration of licenses and insuring that access to new and innovative technologies by disseminating licenses among a wide variety of applicants including women, minorities, and small businesses. We believe that the public interest is best served by extending geographic partitioning to **entities that qualify as entrepreneurs** for paging services, 220 MHz services, 900 MHz SMR service, 800 MHz SMR service, and 38 GHz fixed point-to-point microwave service, as well as disaggregation for 220 MHz, LMDS, 38GHz, 800 MHz SMR, and paging.

Mr. Wayne Perry is quoted in the NPRM, "...if an entity has paid fair value for spectrum at auction there should be few if any restrictions on its ability to sell or lease all or part of that spectrum." (p.10). **The A and B block winners paid the winning bid for licenses knowing the rules limiting partitioning and spectrum disaggregation.** Mr. Perry's statement correctly incorporates, in part, the language, **there should be few restrictions**, in selling or leasing spectrum. There should be restrictions in how public assets are used. One of these few restrictions should meet the public policy goal of expanding economic opportunities for minorities, women and small businesses. The public policy of avoiding a concentration of licenses in the hand of a few would also be met. The public policy of stimulating competition by encouraging new entrants would also be met. Without

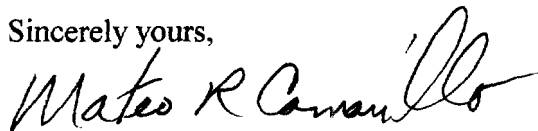
restrictions, partitioning and disaggregation will most likely be a division of public assets by a handful of companies and continue to leave Latinos and other minorities out of the picture. Spectrum is a public asset and should be used for the benefit of **all** the public. Geographic partitioning and spectrum disaggregation is an opportunity for the FCC to stimulate participation by many entities including new entrants. **Without restrictions in the rules, partitioning and disaggregation will create an unanticipated windfall** for all winning bidders who knew the restrictions before they bid and won their licenses.

I was invited and participated in the same FCC En Banc Hearing on Spectrum Policy on March 5, 1996, where Mr. Perry is quoted in the NPRM. I stated, ".... the electromagnetic spectrum is a public asset that belongs to all citizens of the U.S. and must be allocated and licensed to encourage universal service to serve the public trust and serve the interests of all its citizenry....Past spectrum allocations have resulted in an almost total exclusion of some members of our society....For example, as of August 1993, only 2.7% of commercial broadcast stations were owned by minorities who comprise more than 23% of our population. As of 1991, only .5% of our country's minorities owned telecommunication firms and only 11 minority-owned firms were engaged in the delivery of cellular services, specialized mobile radio, radio paging or messaging services." (p. 2 of testimony submitted to the Commission).

Since 99% of all women and minority owned businesses generate annual net receipts of \$1 million or less, limiting partitioning and disaggregation transactions to be with small firms implements the Congressional mandate of Sections 257 and 309(j). The FCC would also avoid the perpetuation of control of telecommunication licenses in the hands of a few. If A, B, D, and E licensees could partition and disaggregate to entities other than designated entities, there would be an unintended windfall benefiting a few. These same few would clearly dominate partitioning and disaggregation transactions if there were no restrictions, which would not serve the public interest of promoting economic opportunity and competition by disseminating licenses among a wide variety of applicants.

The **number one issue** for women, minorities and small businesses is **access to capital**. If there are no limits, entities with ready access to capital such as large businesses will secure most of the spectrum hence perpetuating the concentration in the hands of a few, an anti-competitive issue Congress mandated the FCC to avoid. Women, minorities, and very small firms will be essentially be out of the picture again if restrictions are not included. The spectrum "bargains" within reach of these firms, will probably be in areas lacking enough population density to develop a successful business. It is time to address the fundamental obligation FCC Chairman Reed Hundt spoke about in 1994, to examine new and creative ways to ensure minority opportunity.

Sincerely yours,



Mateo R. Camarillo
President